

State of Manipur and ors. Vs. Manipur Hills and Plain Contractors Association and anr.

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Court : Guwahati

Decided On : Jan-05-2006

Judge : T. Nandakumar Singh, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 47, Rule 1

Appeal No. : Civil Revn. Petn. No. 34 of 2005

Appellant : State of Manipur and ors.

Respondent : Manipur Hills and Plain Contractors Association and anr.

Advocate for Def. : L. Sarat Sharma, Adv.

Advocate for Pet/Ap. : L. Shyamkishwar Singh, Sr. Counsel, a/b., K. Jagat Singh, Adv.

Judgement :

T. Nandakumar Singh, J.

1. It is settled position of law that the Principles of finality of the judgment of the superior Court should be maintained inasmuch as review petitions are not to be taken as a routine course. It is also equally well settled that the Court should act ex debito justitiae as may be necessary in the interest of justice or necessary to do

so for the sake of justice by exercising the power of review. The Court, while exercising the power of review within the four corners of power of review, has to strike the balance between the principle of finality of judgment and requirement of the superior Court to act *ex debito justitiae* by exercising the power of review.

2. As early as 1941, the federal Court has discussed the principles governing the power of review in *Raja Prithwi Chand v. Sukhrai* AIR 1941 FC 1 and held that the Federal Court will not sit as a Court of appeal from its own decisions nor will it entertain applications to review for rehearing and also that an order once made is final. Nevertheless, in exceptional circumstances, an application for review can be entertained. The indulgence by way of review is granted mainly owing to the natural desire to prevent irremediable injustice being done by a Court of last resort as whereby some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard. From the ratio laid down in *Raja Prithi Chand v. Sukhraj* (supra) it is abundantly clear that review petition shall be entertained to prevent irremediable injustice being done by a Court as whereby some accident, without any blame. The Apex Court in *Northern India Caterers (India) v. Ltd. Governor of Delhi* : [1980]2SCR650 held that a party is not entitled to seek a review of a judgment delivered by the Supreme Court merely for the purpose of a re-hearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so. The Apex Court reiterated the same view in *Col. Avtar Singh Sekhon v. Union of India* : (1981)1ILLJ405SC and held that review is not a routine procedure but an application for review could be entertained when there is material error manifest on the face of the earlier order resulting in miscarriage of justice.

3. In *S. Nagaraj v. State of Karnataka* 1993 Supp (4) SCC 595, the Apex Court had discussed the earlier decision of the Apex Court regarding the circumstance in which the Court exercises its power on an application for review to avoid abuse of process or miscarriage of justice. In *Lily Thomas v. Union of India* : 2000 CriLJ2433 the Apex Court had not only discussed the earlier decisions of the Apex Court in *S. Nagaraj* (supra) but also in *Raja Prithwi Chand Lal Choudhury* AIR

1941 FC 1 (supra), Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji : AIR 1970 SC1273 & A.R. Antulay v. R.S. Nayak : 1988 CriLJ1661 and held that (at p. 1662, Para 52 of AIR):

The power of review is not an inherent power. It must be conferred by law. A review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetuation shall result in a miscarriage of justice nothing would preclude the Court from rectifying the error.

4. Apex Court in Surjit Singh v. Union of India : AIR 1997 SC2693 held that when a patent error is brought out to the notice of the Tribunal, the Tribunal is duty bound to correct with grace its mistake of law by way of review of its order or/directions.

5. As discussed above, a review petition will lie on the following three grounds:

- (i) Discovery of new and important matters or evidence;
- (ii) Mistake or error apparent on the face of the record; and
- (iii) Any other sufficient reasons.

This Court in Ranjit Biswas v. Pabitra Narayan Choudhury 1996 (2) GLT 92 is of the view that the expression 'any other sufficient reasons' mentioned in ORDER XLVII, Rule 1, CPC also extends to the grounds or/ reasons on which the Court can entertain review petition for doing substantial justice. This Court in Ranjit Biswas (supra) had reviewed the earlier ex parte judgment and order for disposing the civil revision on merit for doing substantial justice. This Court again in Lalmalsawn v. State of Manipur 2000 (3) GLT 437 for doing substantial justice by interpreting the expression 'any other sufficient reasons' mentioned in Order XLVII, Rule 1, CPC extended to the reasons on which application for review could be entertained for doing substantial justice had allowed the application for reviewing the earlier judgment and order for disposing the writ petition on merit.

6. The facts, stated in short, leading to the filing of the present civil review petition are that the Additional Chief Engineer, PHED, Manipur issued a notice inviting tenders (for short 'NIT') being Tender Notice No. 453 dated 20th September, 2003 for the work 'Augmentation of Water Supply Scheme at Senapati District HQ' on turn key basis on behalf of the Governor of Manipur from the approved and eligible contractors/firms so as to reach the Addl. Chief Engineer, PHED, Manipur upto 3.00 p.m. on 18-10-2003. The respondent No. 2/writ petitioner No. 2 in response to the said NIT dated 20-9-2003 submitted tender documents and the authorities concerned opened the tenders on 18-10-2003 as per schedule. After opening the tender, a list of contractors consisting 9 tenderers was prepared by the concerned authorities. In the said list of 9 contractors, name of the respondent No. 2/writ petitioner No. 2 in the writ petition appears at Sl. No. 4, according to the rate of item of works. It is said that at the time of negotiations, the contractors whose names appear at sl. No. 1, 2 and 3 had withdrawn from the contest and as such the respondent No. 2/writ petitioner No. 2 in the writ petition had been invited for rate negotiations for implementation of Water Supply Scheme for Senapati District HQ under the letter of the Chief Engineer, PHED, Manipur dated 19th January, 2005. But surprisingly, the respondents/writ petitioners had issued a letter dated 7-4-2005 intimating the Chief Engineer, PHED, Manipur that since the tender could not be decided after several sittings of the Tender Committee the Government has decided to cancel the present tender and call a fresh restricted tender to avoid any delay in implementation of the time bound project. Further, necessary actions may be taken up accordingly.

7. Being aggrieved by the said letter of the Government of Manipur dated 7-4-2005, the respondent/writ petitioners filed the writ petition being W.P. (C) No. 489 of 2005 against the present review petitioners, and the reliefs sought for in the writ petitions are:

(i) Issue a Writ of Certiorari for cancellation and quashing the impugned letter and decisions of the respondents dated 7-4-2005 for cancelling the tender and deciding to take fresh restricted tender by reviewing the decisions taken by the respondents:

(ii) Issue a writ of Mandamus directing the respondents to proceed negotiations vide letter dated 19-1-2005 and 20-1-2005 with the respondent No. 2/writ petitioner No. 2; and

(iii) Issue such further orders and directions to the respondents not to resort any restricted tender in respect of the above mentioned civil contract works and pass such orders as appropriate to the nature of the case.

It appears that the respondents/writ petitioners had filed the writ petition for quashing the said letter/decisions of the respondents (State Government) dated 7-4-2005 to take fresh restricted tender as if no further actions had been taken up by the respondents/review petitioners in pursuance of the said impugned decision of the respondents/review petitioners dated 7-4-2005 and also no fresh restricted tender had been issued for the said contract works in pursuance of the said impugned decision/letter of the respondents (State Government dated 7-4-2005. It is also surprising that in the course of hearing of the W.P. (C) No. 498 of 2005 neither the respondents/writ petitioners nor the Government Advocate representing the present civil review petitioners/respondents in the writ petition pointed out the subsequent events taken place in pursuance of the said impugned letter/decisions of the civil review petitioners/respondents in the writ petition dated 7-4-2005. In this factual backgrounds, as agreed by both the parties the writ petition was disposed of by passing the final judgment and order dated 27-9-2005 with the following directions:

(1) The petitioner No. 2, Shri L.S. Puni, shall also be invited along with other eligible contractors in the fresh restricted tenders for the said work, i.e. Augmentation of Water Supply Scheme at Senapati District HQ;

(2) The respondents have to follow the normal procedures for acceptance of tenders as contemplated in the CPWD Manual and other relevant rules followed by the PHED, Govt. of Manipur;

(3) Only after completing the procedures for normal procedures for selection of tenders, the respondents may issue the necessary work orders;

(4) The respondents shall not give effect to any work order/s issued for the said work, i.e. Augmentation of Water Supply Scheme for Senapati District HQ during the pendency of the present writ petition, and

(5) Interim order, if any, in the present writ petition stands vacated.

8. The present review petition is filed for reviewing the judgment and order of this Court dated 27-9-2005 for disposing the W.P. (C) No. 498 of 2005 by bringing out new and important matters/facts to the notice of this Court. In the review petition, it is specifically stated that because of non-bringing of new and important matters/facts to the notice of this Court while passing the judgment and order dated 27-9-2005 there are errors and mistakes apparent on the face of record in passing the final judgment and order dated 27-9-2005.

9. The new important facts/matters brought to the notice of this Court are that in pursuance of the said impugned letter/ decisions of the Government dated 7-4-2005 the civil review petitioner No. 3/respondent No. 3 in the writ petition issued an office memorandum No. CE/PHE/TECH/9-33/ 105/Pt/126 dated 12-4-2005 cancelling the said NIT No. 453 dated 20-9-2003 for the work of 'Augmentation of Water Supply Scheme at Senapati District HQ' and informed the said cancellation to all concerned. It is said that after issuance of the said memorandum dated 12-4-2005, a fresh restricted tender being No. 1 dated 30-4-2005 was issued. It is also specifically stated that the office of the civil review petitioner No. 3/respondent No. 3 in the writ petition vide office letter No. CE/PHE/TECH/9-33/ Pt/05 dated 2-5-2005 informed the respondent No. 2/writ petitioner No. 2 of the restricted tender notice and requested to participate in the same. It is also said that a copy of the said letter dated 2-5-2005 was collected by Mr. P. K. Josheph who is one of the members of the respondent No. 1/writ petitioner No. 1 and an agent of the respondent No. 2/writ petitioner No. 2 from the office of the Civil Review Petitioner No. 3/Respondent No. 3 in the writ petition on 3-5-2005. One Shri Nameirakpam Subaschadra Singh, B.E. (Civil) working as Laboratory Assistant in the Public Health Engineering Department, Govt. of Manipur had submitted an affidavit stating that as directed by the Chief Engineer, PHED, Manipur from the first week of April, 2005 he was dealing with the connected files of the tenders notice No.

453 in connection with 'Augmentation of Water Supply Scheme at Senapati District HQ'. Further, in his affidavit it is said that from the second week of April, 2005, Shri P.K. Josheph came to his office and met him and he introduced himself as an agent of the respondent No. 2/writ petitioner No. 2. Thereafter, Shri P. K. Josheph met him in the office frequently and enquired about the development in connection with the said tender notice. On 3-5-2005 at about 3 p.m. Shri P.K. Josheph came to the office and enquired from him (Shri Nameirakpam Subaschandra Singh) whether any further notice in connection with the said scheme was issued or not. And Shri Nameirakpam Subaschandra Singh informed him that a restricted tender notice was issued and he handed over to him a copy of the restricted tender notice dated 30-4-2005 along with the copy of the invitation letter No. CE/PHE/TECH/9-33/Pt/05 dated 2-5-2005 addressed to the respondent No. 2/writ petitioner No. 2 requesting him to participate in the same. Shri Nameirakpam Subaschandra Singh also obtained the signature of Shri P.K. Josheph for receiving the said tender notice and invitation letter on the office copy.

10. It is also said that the office of the civil review petitioner No. 3/respondent No. 3 in the writ petition issued restricted tender notice to 21 contractors including the respondent No. 2/writ petitioner No. 2. Out of all the 21 contractors only 3 (three) contractors responded to the restricted tender. Amongst the 3 contractors, Tender Committee in its sitting held on 19-8-2005 found Mr. V.S. Nganingkhui, Special Contractor as the lowest tenderers and Tender Committee recommended to award the work in favour of Mr. V.S. Nganingkhui Spl. Contractor. The Civil Review Petitioner No. 1/ respondent No. 1 in the writ petition vide its office letter No. 11/10/2005-PHE dated 26-8-2005 conveyed the approval of the Government to the civil review petitioner No. 3/respondent No. 3 in the writ petition. It is said that the civil review petitioner No. 3/respondent No. 3 in the writ petition issued the work order No. SPT/PHE/6(4)/2005-06/43 dated 8-9-2005 in favour of Mr. V.S. Nganingkhui-Spl. Contractor, Khongbal Tangkhul, Senapati District for the said work. Further, necessary agreement was entered into for the said contract work between Mr. V.S. Nganingkhui, Spl. Contractor and the Executive Engineer, Senapati District, PHE Division, PHED, Manipur on behalf of the civil review petitioners/respondents in the writ petition on 8-9-2005. After execution of the Agreement, Mr. V.S. Nganingkhui, Spl. Contractor, started execution of the work.

11. It is specifically stated in the review petition that through oversight these subsequent events were not mentioned in the counter affidavit of the respondents when drafting the same by the concerned Govt. Advocate. It is also said that through oversight and bona fide mistake, necessary documents, such as subsequent orders mentioned above, i.e.:

(i) Office Memorandum dated 12-4-2005 for cancelling the tender No. 453 dated 20-9-2003;

(ii) Office Memorandum dated 30-4-2005 for issuing restricted tender;

(iii) Office Letter dated 2-5-2005 informing the respondent No. 2/writ petitioner No. 2 of the restricted tender notice;

(iv) Office Letter dated 26-8-2005 conveying the approval of the Govt. to the civil review petitioner No. 3/respondent No. 3 in the writ petition;

(v) Work Order dated 8-9-2005 issued by the civil review petitioner No. 3/respondent No. 3 in the writ petition in favour of Mr. V.S. Nganingkhui, Spl. Contractor;

(vi) And also the Agreement dated 8-9-2005 for execution of the said contract work entered into between Mr. V.S. Nganingkhui, Spl. Contractor and the Executive Engineer, PHE Division Senapati District, PHED, Manipur.

were not brought to the notice of this Court at the time of hearing of the W.P. (C) No. 498 of 2005.

12. The respondents/writ petitioners also filed their affidavit in opposition in the present civil review petition. The only grounds taken in their affidavit-in-opposition are that they had no knowledge about the subsequent events taken place in pursuance of the said impugned letter/decision of the Govt. of Manipur dated 7-4-2005 and they have simply denied the said subsequent events which had been brought to the notice of this Court by filing the present civil review petition.

13. As mentioned above, this Court had passed the final judgment and order dated 27-9-2005 for disposing the W.P. (C) No. 498 of 2005 without knowing the new

facts brought by the review petitioners with the 5 directions mentioned in the Judgment and Order dated 27-9-2005. It is now clear that the tender No. 453 dated 20-9-2003 for the work of Augmentation of Water Supply Scheme at Senapati District HQ had already been cancelled under the said office order dated 12-4-2005 and fresh restricted tender dated 30-4-2005 was issued. The tender Committee in its sitting held on 19-8-2005 found Mr. V.S. Nganingkhui, Spl. Contractor as the lowest tenderer and work order dated 8-9-2005 for the said contract work had already been issued in favour of Mr. V.S. Nganingkhui, Spl. Contractor and further, an agreement for execution of contract work between Mr. V.S. Nganingkhui, Spl. Contractor and the Executive Engineer, Senapati PHE Division, PHED, Manipur had already been entered into and after execution of the work agreement Mr. V.S. Nganingkhui, Spl. Contractor had started execution of the contract work. But because of the final judgment and order of this Court dated 27-9-2005, the civil review petitioner No. 3/respondent No. 3 in the writ petition vide its office letter No. CE/PHE/9-33/05/ 1604 dated 7-10-2005 directed the Executive Engineer, Senapati, PHE Division, PHED, Manipur to inform Mr. V.S. Nganingkhui, Spl. Contractor for keeping the progress of the work under suspension temporarily. In pursuance of the said letter, the Executive Engineer, Senapati PHE Division, PHED, Manipur vide his office letter No. EE/SPT/PHE/NLCPR/Spt.Hd.Qtr/05-06/114 dated 10-10-2005 directed Mr. V.S. Nganingkhui, Spl. Contractor to suspend the work immediately. As a result, further progress of the time bound work is suspended and there is no chance to complete the time bound work of the project thereby affecting the interest of the general public.

14. For the reasons discussed above, this Court is of the considered view that this Court is duty bound to correct with grace its mistakes in passing the judgment and order dated 27-9-2005 when a patent error is brought to the notice of this Court. Further, this Court is of the view that the law is to bend for justice and if the Court finds that an error pointed out in the judgment and order dated 27-9-2005 in the review petition was due to mistake of facts and the earlier judgment and order would not have been passed, this Court is duty bound to prevent the miscarriage of justice in passing the judgment and order dated 27-9-2005.

15. For the reasons discussed above and also for doing substantial justice, the earlier judgment and order dated 27-9-2005 passed in W.P. (C) No. 498 of 2005 is reviewed and recalled, review petition is allowed. Accordingly, the W.P. (C) No. 498 of 2005 is hereby dismissed. However, it is left to the writ petitioners to challenge the work order dated 8-9-2005 issued in favour of Mr. V.S. Nganingkhui, Spl. Contractor by filing a fresh writ petition. No order as to costs.

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